

# ITEL

## Pullman

November 8, 1989

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RECORDED IN

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NOV 13 1989 -11 30 AM

### IteI Rail Corporation

55 Francisco Street  
San Francisco, CA 94133  
(415) 984-4000  
(415) 781-1035 Fax

### INTERSTATE COMMERCE COMMISSION

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

9-317A005

Re: Supplement No. 1 to Lease Agreement dated October 13, 1989, between IteI Rail Corporation and Western Rail Road Company

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Supplement under the Lease Agreement dated October 13, 1989, between IteI Rail Corporation and Western Rail Road Company, which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

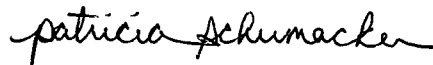
IteI Rail Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Western Rail Road Company (Lessee)  
5101 Navigation Street  
Houston, Texas 77011

This Supplement adds to the Lease Agreement three hundred five (305) 2300 cubic foot, 100-ton, open top hopper cars bearing reporting marks WRRC 100-723 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,



Patricia Schumacker  
Legal Assistant

NOV 13 1989 -11 30 AM

SCHEDULE NO. 1

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE NO. 1 ("Schedule") to that certain Lease of Railroad Equipment (the "Agreement") made as of OCT 13, 1989 between ITEL RAIL CORPORATION as lessor ("Lessor"), and WESTERN RAIL ROAD COMPANY, as lessee ("Lessee") is made this 13<sup>TH</sup> day of OCTOBER, 1989.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1.
2. Lessor hereby leases to Lessee the Cars described in Exhibit A attached hereto subject to the terms and conditions of the Agreement and this Schedule.
3. The term of the Agreement with respect to each Car described in this Schedule shall commence ("Delivery") at 12 noon on the date this agreement is fully executed and shall continue as to all of the Cars described in this Schedule for ten years (the "Lease Term").
4. Lessee agrees to pay the rent set forth in this Schedule, notwithstanding the fact that Lessee may not have immediate physical possession of the Cars leased hereunder.
5. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement.
6. Lessee shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule.
7. Lessee assumes responsibility for and agrees to pay, defend, hold harmless and indemnify Lessor and its successors against all taxes, fees, levies, imposts, duties or withholdings of any nature, together with penalties, fines or interest thereon, imposed on, incurred by, asserted against or imposed upon: (1) the Cars; (2) the lease, sublease or delivery of the Cars; and (3) the revenues earned by the Cars, including, but not limited to, mileage charges and/or car hire revenues earned during the Initial Term or any Extended Term of the Agreement; provided, however, that Lessee shall not be responsible for taxes on Lessor's income. Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars.
8. A. The \_\_\_\_\_ per Car per month for each full calendar month ("Month") during the Lease Term. The \_\_\_\_\_ for any Car which is not subject to the Agreement for an entire Month shall be prorated at \_\_\_\_\_

Car during such Month. The                      per day for such Rent shall be due and payable regardless of any claimed abatement, reduction or offset, except as otherwise provided herein.

- B. Lessee shall pay to Lessor the Fixed Rent on the first day of each month during the Lease Term.
9. A. Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, liabilities, losses, damages, costs and expenses (including attorneys' fees) caused by, arising out of, or in connection with the Cars, including the use, possession, operation, maintenance and leasing of the Cars (collectively, "Damages"), except for any Damages which arise solely from Lessor's negligence.
- B. Lessor agrees to indemnify and hold Lessee harmless from any Damages which arise solely from Lessor's negligence.
- C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.
10. A. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, if some or all of the Cars are to be delivered to Lessor at Lessee's railroad tracks, Lessee shall be responsible for any transportation costs incurred in moving such Cars to said tracks subsequent to the time of expiration of this Agreement as to the Cars. Lessee shall, at Lessor's option, provide up to one hundred twenty (120) days' free storage on its railroad tracks for any Car which is either on Lessee's railroad tracks at expiration or is subsequently returned to Lessee's railroad tracks. Said one hundred twenty (120) days shall run either from expiration or from the date such Car is returned to Lessee's railroad line subsequent to expiration, whichever date is later. If requested to do so by Lessor upon expiration or termination hereof, Lessee shall, at Lessor's option, either move a remarked Car to an interchange point on Lessee's lines selected by Lessor or use its best efforts to load the remarked Car with freight and deliver it to a connecting carrier for shipment.
- B. Upon the expiration of the Lease Term and provided no event of default exists under the terms of the Agreement with respect to the Cars, Lessee shall have the option to purchase any or all of the Cars pursuant to the following conditions: (a) the purchase price shall be eight thousand dollars (\$8,000.00) per Car, (b) Lessee shall be responsible for, shall pay, and shall agree to indemnify Lessor for, any or all sales or use tax accruing as a result of such sale, (c) Lessor shall

execute and deliver to Lessee a bill of sale upon Lessee's payment of the purchase price for the Cars, (d) the Cars shall be sold AS IS, WHERE IS, without representations or warranties of any kind (including warranties of merchantability and fitness for a particular purpose), except that Lessor shall warrant that the Cars are free of any liens or encumbrances granted by Lessor.

11. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAIL CORPORATION

BY: Robert Kielule

TITLE: VICE PRESIDENT

DATE: OCTOBER 13, 1989

WESTERN RAIL ROAD COMPANY

BY: [Signature]

TITLE: [Signature]

DATE: OCTOBER 13, 1989

**EXHIBIT A**

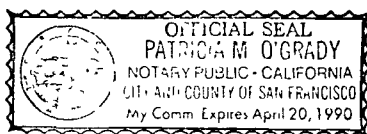
Exhibit A to Schedule No.1 dated as of \_\_\_\_\_  
to the Lease Agreement between ITEL RAIL CORPORATION as lessor  
and WESTERN RAIL ROAD COMPANY as lessee.

Three hundred five (305) 100-ton, 2300-cubic foot open top  
hopper cars identified by the following Reporting Marks:

WRRC 100  
WRRC 102  
WRRC 103  
WRRC 105  
WRRC 110  
WRRC 111  
WRRC 113  
WRRC 115  
WRRC 116  
WRRC 118  
WRRC 119  
WRRC 121  
WRRC 122  
WRRC 123  
WRRC 125  
WRRC 126  
WRRC 131  
WRRC 134  
WRRC 135  
WRRC 137  
WRRC 140 - 144 (inclusive)  
WRRC 147  
WRRC 150 - 155 (inclusive)  
WRRC 157  
WRRC 158  
WRRC 160  
WRRC 161  
WRRC 163 - 166 (inclusive)  
WRRC 168  
WRRC 170  
WRRC 171  
WRRC 177  
WRRC 179  
WRRC 182 - 184 (inclusive)  
WRRC 186 - 189 (inclusive)  
WRRC 191 - 195 (inclusive)  
WRRC 474 - 516 (inclusive)  
WRRC 518 - 616 (inclusive)  
WRRC 618 - 723 (inclusive)

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF SAN FRANCISCO )

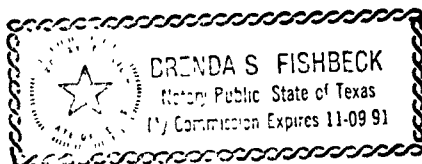
On this 13<sup>th</sup> day of OCTOBER, 1989, before me personally appeared Robert C. Hayes, to me personally known, who being by me duly sworn says that such person is <sup>vice</sup> President and ~~Chief Executive Officer~~ of ITEL Rail Corporation, that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia M. O'Grady  
Notary Public

STATE OF TEXAS )  
 ) ss:  
COUNTY OF Harris )

On this 13<sup>th</sup> day of October, 1988, before me personally appeared B. K. Parker, Jr., to me personally known, who being by me duly sworn says that such person is President of Western Rail Road Company that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Brenda S. Fishbeck  
Notary Public